SULLIVAN, J., dissenting. I disagree with both the majority's conclusion that the trial judge did not abuse his discretion in denying the defendants'[1] motion requesting that he recuse himself and with its conclusion that the trial court properly granted the intervenors'[2] motions to vacate the sealing orders. Accordingly, I dissent.

I

I first address the defendants' claim that the Honorable Jon M. Alander improperly denied their request that he recuse himself because his dual roles as a member of the judicial branch's public access task force (task force) and as the presiding judge in this case resulted in an actual or apparent conflict. The following facts are relevant to this claim. On May 9, 2006, the judicial branch issued a press release in which it announced that Senior Associate Justice David M. Borden, who was the acting head of the judicial branch, had created the task force, the mission of which was to "make recommendations for the maximum degree of public access to the courts, consistent with the needs of the courts in discharging their core functions . . . ." (Internal quotation marks omitted.) Press Release, Connecticut Judicial Branch, Judicial Branch's Public Access Task Force Schedules May 25 Meeting (May 9, 2006). The task force was comprised of Associate Justice Richard N. Palmer, the chairman, eight additional members of the judiciary, seven members of the news media, including Alaine Griffin, a reporter with the Hartford Courant, and two attorneys.

At the June 26, 2006 annual meeting of the judges of the Superior Court, Justice Borden explained the reasons for the creation of the task force. Remarks of Senior Associate Justice David M. Borden, Annual Judges Meeting (June 26, 2006) pp. 2–3. He noted that Governor M. Jodi Rell recently had appointed her own task force to recommend ways to make the judicial system more open. Id., p. 4. He stated that, "in the eyes of the other two branches of government, the press, and the public with whom those entities communicate daily, the judicial system is perceived as broken in that it is not sufficiently open and accessible. In that regard, there are things about the judicial system that need fixing. I assure you that if we don't fix it ourselves, others will be only too willing to do that for us." Id. He stated that, "[u]nless we, as judges, seize the initiative, our opportunity to affect the ongoing debate will be lost, with serious long-term consequences for the [j]udicial [b]ranch, judicial independence, and ultimately, the public interest." Id.

The public concerns over public access to the courts that the task force was intended to address had arisen in part as the result of two recent controversies. First, in June, 2002, the Connecticut Law Tribune published an article revealing that the judicial branch had engaged in a practice of classifying sealed case files as level 1, level 2 and level 3. The level 1 files lacked public docket numbers and party names. The level 2 files were provided with names and docket numbers, but the entire case was sealed. The level 3 files contained individually sealed documents in an otherwise open file. See T. Scheffey, "Settlement Reached In Secret-Files Suit," 32 Conn. L. Trib. No. 25, June 12, 2006, p. 2; see also *Hartford Courant Co.* v. *Pellegrino*, 380 F.3d 83, 87 (2d Cir. 2004).[3]

This revelation resulted in "extensive coverage" of the sealing practice by various newspapers, which, in the words of a newspaper reporter, "touched off a public outcry . . . ." T. Scheffey, supra, 32 Conn. L. Trib. No. 25, p. 2. In response, the judicial branch abolished the level 1 file system and the Superior Courts were instructed that, in the future, all cases should have docket numbers. Id. These new rules were not retroactive, however, and the Hartford Courant, later joined by the Connecticut Law Tribune, brought an action against the judicial branch in the United States District Court seeking the names, docket numbers and docket sheets of the previously sealed level 1 files and level 2 files. Id.; see also *Hartford Courant Co.* v. *Pellegrino*, 290 F. Sup. 2d 265 (D. Conn. 2003). The judicial branch argued that the action should be dismissed because, among other reasons, issues involving the scope of public access to court documents currently were being litigated in state court in the present case. See *Hartford Courant Co.* v. *Pellegrino*, supra, 290 F. Sup. 2d 270 ("[t]he court . . . believes that a discussion of the issues in the case of *Rosado* v. *Bridgeport Roman Catholic Diocesan Corp.*, 77 Conn. App. 690, 825 A.2d 153 [certs. granted, 266 Conn. 906, 907, 832 A.2d 71, 72 (2003)] is merited because the case is central to the arguments of both parties in the present litigation").[4]

On June 6, 2006, the newspapers and the judicial branch settled the federal litigation and stipulated to its dismissal. Under the terms of the settlement agreement, the judicial branch agreed to transfer all level 1 cases to a single Superior Court judge who was to have authority to rule on the merits of any and all motions to obtain access to the records.

Second, the task force was intended to address public concerns that had arisen as the result of this court's May 2, 2006 decision in *Clerk of the Superior Court* v. *Freedom of Information Commission*, 278 Conn. 28, 42, 895 A.2d 743 (2006), in which we had concluded that only court records "pertaining to budget, personnel, facilities and physical operations of the courts" were

subject to the Freedom of Information Act, and that "records created in the course of carrying out the courts' adjudicatory function are categorically exempt from the provisions of the act." Id., 29.

On May 17, 2006, the judicial branch announced that two judges who had been appointed to the task force would not be able to serve and that they would be replaced by Judge Alander and Judge Barry K. Stevens. Press Release, Connecticut Judicial Branch, Update on Justice Borden's Public Access Task Force (May 17, 2006). The Hartford Courant reported that the judges had been replaced after they had informed Justice Borden that "they were caught up in the controversy and ongoing legal battle over the 'super-sealing' of court files." L. Tuohy, "Changes In Court Task Force," Hartford Courant, May 17, 2006, p. B1.

Thereafter, Judge Alander was appointed as the cochairman of the task force's court records committee (committee). Griffin, the reporter for the Hartford Courant, was also appointed to that committee. Judge Alander and Griffin attended six committee meetings together over the course of approximately eight weeks. At its June 6, 2006 meeting, the committee adopted four "guiding principles" regarding public access to court documents. The first two principles were: (1) "All records are presumptively open"; and (2) "Records should be closed to the public only if there is a compelling reason to do so." Those principles were incorporated into the committee's final report to Justice Borden. See Connecticut Judicial Branch, Public Access Task Force, Final Report (September 15, 2006), p. 4-10. The final report also defined "[c]ourt [r]ecord" to include: "(1) Any document, information, or other item that is collected, received, or maintained by a court or clerk of [the] court in connection with a judicial proceeding"; and "(2) Any index, calendar, docket, register of actions, official record of the proceedings, order, decree, judgment, minute, and any information in a case management system created by or prepared by the court or clerk of the court that is related to a judicial proceeding . . . ." Id., p. 4-12.

Not all members of the judicial branch were pleased with the task force proceedings. A judge of the Superior Court gave a speech at the June 26, 2006 annual judges meeting in which he expressed his concern that the judges had not been consulted about the possible changes in the rules governing public access to court documents; see T. Scheffey, "Judges Feel Left Out Of The Loop," 32 Conn. L. Trib. No. 29, July 3, 2006, p. 1; and complained that the judges had been " 'the least informed regarding proposals that may effectuate the most sweeping changes experienced in the history of the [j]udicial [b]ranch . . . .' " Id., p. 9. The Connecticut Law Tribune reported that the judge's remarks had "implied a danger that [Justice] Borden, through the

task force, would attempt to administratively create rule changes and avoid full [r]ules [c]ommittee of the Superior Court oversight and procedure." Id., pp. 1, 9. The judge's remarks were greeted with applause by some of the other judges. Id., p. 9. He ended his speech with the statement, " 'No reprisals, please.' "[5] Id. In response, Justice Borden indicated that he was aware that "some judges fear [they would] face 'possible adverse consequences' if they spoke against making courts more open," but insisted that that was not the case. Id.

With this background in mind, I turn to the principles governing judicial disqualifications. As the majority points out, "canon 3 of the Code of Judicial Conduct requires a judge to disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned. The reasonableness standard is an objective one. Thus, the question is not only whether the particular judge is, in fact, impartial but whether a reasonable person would question the judge's impartiality on the basis of all the circumstances. . . . Disqualification is required even when no actual bias has been demonstrated if a judge's impartiality might reasonably be questioned because *the appearance* and the existence of impartiality are both essential elements of a fair exercise of judicial authority. . . . Indeed, prevention of *the appearance* of impropriety is of vital importance to the judiciary and to the judicial process. . . . Members of the judiciary should be acutely aware that any action they take, whether on or off the bench, must be measured against exacting standards of scrutiny to the end that public perception of the integrity of the judiciary will be preserved . . . . There must also be a recognition that any actions undertaken in the public sphere reflect, whether designedly or not, upon the prestige of the judiciary. . . . Judges must assiduously avoid those contacts which might create even *the appearance* of impropriety." (Citations omitted; emphasis added; internal quotation marks omitted.)

In my view, a person of ordinary experience and intelligence reasonably could have the following perception of the foregoing facts.[6] First, the official and publicly stated position of the judicial branch in the federal litigation over the sealed court files was that that case and the present case involved very similar issues and the resolution of the present case would shed light on, if not govern, the resolution of the federal case. Thus, the judicial branch regarded the present case as involving the same public concerns and controversies as the federal litigation over the sealed cases. Second, the federal litigation, and the outcry in the press over the sealing of court files that led to and accompanied that litigation, were one reason for the judicial branch's creation of the task force. Third, and most significantly, the express mission of the task force was to maximize public access to court records.

Although this maximization of public access was to be limited by the *needs of the courts*, the task force clearly was expected to increase public access to court records and there could be no doubt that at least some private concerns that previously had been considered valid reasons for sealing court files would no longer be deemed sufficient. Fourth, the judicial branch was concerned that, if it did not take steps to maximize public access to court records on its own, public pressure would compel the legislative branch or the executive branch to take those steps for it. Fifth, it appeared that at least some Superior Court judges felt that they were under pressure by the branch itself to adopt or to accept new rules and policies governing public access to court documents that they might not have adopted in the ordinary course of judicial rule making. Sixth, Judge Alander was the chairman of the very committee that was charged with recommending new rules and policies to maximize public access to court records. Finally, Judge Alander served on that committee with Griffin, who was a reporter for the Hartford Courant, which, in turn, is one of the intervenors in the present case. Griffin presumably was chosen to serve on the committee because of the Hartford Courant's institutional interest in increasing access to court files. Although Justice Borden exhorted the members of the task force to adopt "the vantage point of the public interest,"[7] the Hartford Courant had no ethical or other obligation to consider or to advocate any interests other than its own. Connecticut Judicial Branch, Public Access Task Force, Remarks of Senior Associate Justice David M. Borden for the Opening Meeting (May 25, 2006) p. 6.

In light of these circumstances, I believe that a person of ordinary intelligence and experience would have reason to question Judge Alander's impartiality in the present case.[8] The issues raised in this case were, in the expressed view of the judicial branch, inextricably intertwined with the issues raised in the federal litigation over the sealed cases, and the task force was created in part to address public concerns over the sealing practice.[9] A judge of the Superior Court publicly expressed his view that, as a result of the task force, the judges might be pressured to accept new policies and procedures regarding public access to court records that they would not have adopted in the normal course of rule making. Judge Alander served as the chairman of the very committee that was charged with making the recommendations for these new policies and procedures, and he served on the committee with a representative of one of the intervenors in the present case. Finally, the creation of the task force and Judge Alander's service on it were simultaneous with the present litigation. Thus, at the same time that Judge Alander and Griffin were charged with identifying new procedures and policies to maximize public access to court records, consistent with the needs of the judicial sys-

tem, Judge Alander was charged with determining whether the public should have access to the court records at issue in the present case.[10]

Accordingly, a person of ordinary experience and intelligence reasonably could have the perception that Judge Alander might believe that a decision adverse to the intervenors in the present case would expose the task force to the very same public criticism that it was intended to allay, would expose the judicial branch to the same risk of interference from the executive and legislative branches that the task force was intended to prevent, and would expose Judge Alander himself to criticism by all three branches of government. A person of ordinary experience and intelligence also reasonably could have the perception that the Hartford Courant had access to Judge Alander for the purpose of persuading him of the merits of its position on the issue of maximizing public access to court documents that the defendants in the present case did not have. In my view, that circumstance, in and of itself, was sufficient grounds for disqualification. Finally, a person of ordinary experience and intelligence reasonably could have the perception that, if the defendants in the present case were to challenge policies and procedures that the task force adopted, Judge Alander effectively would be in the position of reviewing his own recommendations.[11] Cf. *United States* v. *Glick*, 946 F.2d 335, 336 (4th Cir. 1991) (judges who were involved in promulgation of sentencing guidelines properly may participate in appeals in "*typical* [g]uidelines cases, unless they involve a serious legal challenge to the [g]uidelines themselves" [emphasis in original; internal quotation marks omitted]). Because I believe that Judge Alander's dual roles as a member of the task force and as the judge in the present case were in apparent conflict, I would conclude that he improperly denied the defendants' request that he recuse himself.

In support of its conclusion to the contrary, the majority states that "service on a commission concerned with improving the legal system and the administration of justice, without more, is not a basis for disqualification, even if the subject matter generally relates to the area of the law at issue in the case at hand." As the majority also recognizes, however, "[a]n inquiry into the disqualification of a judge requires a *sensitive* evaluation of *all* the facts and circumstances in order to determine whether a failure to disqualify the judge was an abuse of sound judicial discretion." (Emphasis added.) None of the cases cited by the majority in support of its conclusion involved a situation where: (1) the case under review was inextricably intertwined with a set of events that the commission was intended to address; (2) the commission was charged with formulating the precise policies and procedures that could be dispositive of the case under review and was under political pressure to adopt policies that would be unfavorable

to one of the parties; (3) the judge served on the commission with a representative of one of the parties to the case under review; and (4) all of the judge's service on the commission was simultaneous with the litigation. Thus, the majority fails to follow its own directive to conduct a sensitive evaluation of *all* of the relevant facts and, instead, relies solely on the blanket application of one general principle in support of its conclusion that none of these circumstances could have created even the appearance of impartiality.

The majority also states that a reasonable observer would not believe that Judge Alander disregarded canon 3 (a) (4) of the Code of Judicial Conduct, which prohibits ex parte communications between a judge and a party regarding a proceeding. I agree that it would not be reasonable to conclude that Judge Alander and Griffin discussed this particular litigation during the task force meetings. They undoubtedly did discuss, however, the policies and principles that would govern public access to court documents,[12] an issue central to the resolution of the present case, and Griffin undoubtedly was appointed to the task force because of the Hartford Courant's institutional interest in maximizing public access to those records, a general interest that has taken particular form in the present case. The defendants had no comparable opportunity to shape Judge Alander's views on that issue.

Finally, for the reasons explained in part II of this dissenting opinion, I disagree with the majority's conclusion that the question of whether the trial court improperly vacated the sealing orders is a pure question of law. Accordingly, I would conclude that Judge Alander's improper denial of the defendant's motion requesting that he recuse himself requires a remand for an evidentiary hearing on the question of whether the sealing orders should be vacated.

II

I next address the majority's conclusion that the trial court properly granted the intervenors' motion to vacate the sealing orders. I agree with the majority's conclusion that "any document filed that a court reasonably may rely on in support of its adjudicatory function is a judicial document." I also agree that documents that the trial court has relied on in making a decision are judicial documents subject to the presumption of public access regardless of whether the underlying motions were granted or denied. Finally, I agree with the majority that, ordinarily, the trial court should apply a balancing test in determining whether sealing orders should be modified.[13]

For the reasons stated in my dissenting opinion in *Rosado* v. *Bridgeport Roman Catholic Diocesan Corp.*, 276 Conn. 168, 231–41, 884 A.2d 981 (2005) (*Sullivan, J.*, dissenting), however, I disagree with the majority's

conclusion that the trial court properly granted the intervenors' motion to vacate the sealing orders under the circumstances of the present case. As I stated in *Rosado*, "[t]he general rule is that intervention *after an action has been terminated* is highly disfavored and will be granted only in extraordinary cases."[14] (Emphasis added.) Id., 238. I continue to believe that, pursuant to the "judicial policy in favor of judicial economy, the stability of former judgments and finality"; (internal quotation marks omitted) *Lafayette* v. *General Dynamics Corp.*, 255 Conn. 762, 772, 770 A.2d 1 (2001); parties seeking to intervene in terminated actions must show extraordinary circumstances at the intervention stage.

Even if proof of extraordinary circumstances or compelling need is not required at the intervention stage, however, I would conclude that such proof is required to modify sealing orders in terminated cases. By applying the ordinary balancing test, the majority simply ignores the fact that the present case was settled and withdrawn more than one year before the intervenors sought access to the sealed documents, and it treats the motions to vacate the sealing orders in exactly the same way that it would treat such motions in an active case.[15] Thus, the majority gives no weight at all, at any stage of its analysis, to the judicial policy disfavoring interventions after judgment in the interests of judicial economy, stability of judgments and finality.[16]

Nor does the majority take into account the fact that the news media, including at least two of the intervenors—the Hartford Courant Company and the New York Times Company—reported extensively on the underlying cases from the time that the first action was brought in early January, 1993, through the date that they were settled, that they knew about the sealing orders, and that they never sought to intervene in the cases for the purpose of challenging the sealing orders while the cases were active. This fact belies any suggestion that the intervenors are seeking access to the sealed files in order to "provide the public with a more complete understanding of the judicial system and a better perception of its fairness"; (internal quotation marks omitted) see part II A of the majority opinion; which is the primary rationale for the presumption of public access to judicial records.

Moreover, while I believe that the interests of judicial economy, stability of judgments and finality mandate the application of a more stringent standard for the modification of sealing orders in *all* terminated cases, they have even greater force when the parties have settled a case in reliance on the existence of sealing orders. See *Securities & Exchange Commission* v. *TheStreet.com*, 273 F.3d 222, 229 (2d Cir. 2001) (modification should not be granted in absence of compelling need or extraordinary circumstances when protective order has been relied upon); see also *Blakeslee Arpaia*

Chapman, *Inc.* v. *EI Constructors*, *Inc.*, 239 Conn. 708, 742, 687 A.2d 506 (1997) (discussing "[t]he strong public policy favoring the pretrial resolution of disputes" [internal quotation marks omitted]).[17] In my view, the defendants reasonably could have relied on the existence of the sealing orders when they settled the cases. In addition, I would conclude that, because they have alleged that they in fact relied on the continued viability of the sealing orders, they are entitled to an evidentiary hearing on that question. See *Duplissie* v. *Devino*, 96 Conn. App. 673, 691, 902 A.2d 30 (whether party relied on representation is question of fact), cert. denied, 280 Conn. 916, 908 A.2d 536 (2006).

The trial court's finding that it was not reasonable for the parties to have relied on the protective order because "it was *clear* from the *express* language of [the sealing orders] that [they were] intended to be temporary" is not supported by the evidence. (Emphasis added.) In addition to providing that the sealing orders would be subject to reconsideration no later than jury selection, the sealing orders also provided that "[a]ll . . . documents and transcripts [subject to the sealing orders] which the attorneys representing any of the parties believe in good faith may be entitled to protection from disclosure *after the completion of jury selection*, shall be marked 'CONFIDENTIAL: SUBJECT TO COURT ORDER' and shall be submitted to the court for review and appropriate order before being released from the protection afforded by this order." (Emphasis added.) Thus, the sealing orders had two functions. First, they immediately prohibited disclosure of *any* information and materials obtained through the deposition of the defendants. Second, they recognized that at least some of these materials, which were to be marked " 'CONFIDENTIAL: SUBJECT TO COURT ORDER,' " could be entitled to protection even after jury selection. As the majority recognizes, numerous documents submitted pursuant to the sealing orders were marked with this notation. It is apparent, therefore, that, rather than clearly and expressly providing that the sealing orders were temporary, the sealing orders clearly and expressly provided, at least with respect to the marked documents, that no determination as to their temporal duration had yet been made. Thus, the trial court, *Levin*, *J.*, clearly recognized that there might be considerations other than ensuring the defendants' right to a fair trial that would justify sealing some of the documents permanently.

Moreover, even if the sealing orders had expressly provided that they were not intended to be permanent, the defendants reasonably could have believed that they would *not* be reconsidered *until* jury selection and they reasonably could have relied on this understanding when they agreed to settle the cases *before* jury selection.[18] Clearly, the defendants had a strong incentive to settle the cases before trial in order to avoid the risk

that the sealing orders would be vacated or modified. Indeed, if the sealing orders expressly had provided that they were not subject to modification, that would *undermine* the defendants' argument that they settled the cases in reliance on their understanding that they would not be reconsidered until the time of trial. The majority's decision is inconsistent with the strong public policy favoring pretrial resolution of disputes because parties to future cases will be subject to the risk of such publicity regardless of whether they settle a case and, therefore, they will have a reduced incentive to settle.[19]

Finally, I disagree with the majority that whether the documents contained in the sealed files are judicial documents is a question of law to be resolved by this court in the first instance. Although the definition of "judicial documents" is a legal question, whether a party filed a particular document in support of a motion is a question of fact. As the majority points out, the defendants submitted forty-eight compact discs containing the privilege logs prepared by the defendants and copies of 12,675 pages of sealed documents. Among these materials, the majority identifies fifteen documents that it contends are not judicial documents because they were not filed in support of any motion. I believe that the trial court, and not this court, should answer the factual question of whether a particular document is a judicial document, especially in light of the volume of the documents and the complexity of the underlying cases.

In summary, I believe that the intervenors should have been required to demonstrate that their intervention in the present case was justified by extraordinary circumstances. Even if a showing of extraordinary circumstances was not required at the intervention stage, however, the intervenors should have been required to show extraordinary circumstances or compelling need in order for the trial court to modify the sealing orders, particularly if the defendants relied on the orders in settling the underlying cases. Because the trial court did not apply this standard, I would remand the case to the trial court for an evidentiary hearing. Finally, even if the trial court applied the proper standard for vacating the sealing orders, I would conclude that the trial court, not this court, should determine in the first instance which of the documents contained in the sealed files are judicial documents. Accordingly, I dissent.

[1] The defendants are identified in footnote 1 of the majority opinion.

[2] The intervenors are identified in footnote 2 of the majority opinion.

[3] I was a named defendant in *Hartford Courant Co.* v. *Pellegrino*, supra, 380 F.3d 83, in my capacity as Chief Justice of the Supreme Court.

[4] The United States Court of Appeals for the Second Circuit ultimately rejected the judicial branch's argument that the resolution of the present case would resolve the issues in the litigation over the sealed files. See *Hartford Courant Co.* v. *Pellegrino*, supra, 380 F.2d 99–100.

[5] I emphasize that I take no position as to whether the judge's concern about reprisals was well-founded. I refer to these remarks only to show

that an ordinary person reasonably could have the perception that some judges *felt* that they were under undue pressure to accept policies that would maximize public access to judicial records.

[6] Again, I emphasize that I do not state that these perceptions are accurate. I believe only that the facts reasonably could appear in this light to persons of ordinary experience and intelligence.

[7] See part I A of the majority opinion.

[8] Again, I have no reason to believe that Judge Alander was actually biased in the present case. I believe only that these circumstances could give rise to a reasonable perception of bias.

[9] The majority understands me to be saying that "there is a public perception that Judge Alander was involved in the controversy of supersealed cases" and claims that this conclusion is the result of a "faulty syllogism." See footnote 13 of the majority opinion. The syllogism provided by the majority may be faulty, but it is not mine. My point is that the legal issues raised by this case were intertwined with the legal issues in the litigation over the sealed cases, which the task force was intended to address, and, therefore, a reasonable person could have the perception that the policies adopted by the task force could have an affect on this case.

[10] Indeed, if these circumstances did not give rise to even the appearance of partiality, it is difficult to understand why two Superior Court judges were determined to be unable to serve on the task force because of their involvement in the controversy over the sealed cases.

[11] Contrary to Judge Alander's suggestion that the task force was recommending only " 'what the policy and law *should be* regarding public access to court records,' " while the issues in the present case concerned " 'what is the *existing* law regarding public access and how does it apply to the facts of these cases' "; (emphasis in original) see part I A of the majority opinion; it is far from clear that the policies and procedures adopted by the task force could have no affect on this case. Rather, the policies adopted by the task force would be persuasive authority in pending cases. Cf. *Marone* v. *Waterbury*, 244 Conn. 1, 11 n.10, 707 A.2d 725 (1998) ("[i]mplicit in our decisions that have discussed the retroactive application of judgments is the presumption that retroactivity is limited to pending cases"). Indeed, when the federal litigation over the sealed files was settled in June, 2006, an attorney for one of the plaintiff newspapers in that litigation stated: "I'm tremendously pleased that the new leadership of the [j]udicial [b]ranch has recognized the value of resolving this long-standing federal court action and I have every confidence that the matter will be addressed expeditiously by the Superior Court in the new spirit of openness." (Internal quotation marks omitted.) T. Scheffey, supra, 32 Conn. L. Trib. No. 25, p. 2. Moreover, the majority acknowledges that "what constitutes a document subject to the presumption of public access is a question of law that is squarely presented to this court for the first time." If the task force was not intended to formulate official judicial policy on this question, it is difficult to understand what its purpose could have been.

I note that, at the June 13, 2006 meeting of the committee, which both Judge Alander and Griffin attended, there was a discussion of what constitutes a court record subject to public access. Judge Alander "mentioned a [United States Court of Appeals for the Second Circuit] ruling that indicated [that] there is no right of public access to a document filed with the court if the document is not used for adjudication. He indicated that it would be better to keep the rule as broad as possible and handle problems (i.e., filing of scandalous or irrelevant material) by other means so that anything filed with the court is open to public access, whether used for decision-making or not." This is the same standard that Judge Alander ultimately applied in the present case.

[12] See footnote 11 of this dissenting opinion.

[13] Because I believe that the trial court applied the wrong standard in determining whether the sealing orders should be vacated, I would not reach the question of whether the defendants waived any claim of privilege when they divulged the documents to the plaintiffs in the underlying cases without raising a claim of privilege.

[14] "See *United States* v. *Associated Milk Producers, Inc.*, 534 F.2d 113, 116 (8th Cir.) ('[t]he general rule is that motions for intervention made *after* entry of final judgment will be granted only upon a strong showing of entitlement and of justification for failure to request intervention sooner' . . .), cert. denied sub nom. *National Farmers' Organization, Inc.* v. *United States*, 429 U.S. 940, 97 S. Ct. 355, 50 L. Ed. 2d 309 (1976); *Crown Financial Corp.* v. *Winthrop Lawrence Corp.*, 531 F.2d 76, 77 (2d Cir. 1976)

(intervention after judgment is unusual and not often granted); *Black* v. *Central Motor Lines, Inc.*, 500 F.2d 407, 408 (4th Cir. 1974) ('[i]ntervention is ancillary and subordinate to a main cause and whenever an action is terminated, for whatever reason, there no longer remains an action in which there can be intervention'); *Abdul-Raheem* v. *Orr*, 672 F. Sup. 1389, 1391 (W.D. Okla. 1986) (when action is terminated, for whatever reason, there no longer remains action in which to intervene); *Mundt* v. *Northwest Explorations, Inc.*, 947 P.2d 827, 830 (Alaska 1997) (motions to intervene made after conclusion of litigation normally are not timely absent showing of justification); *In re One Cessna 206 Aircraft*, 118 Ariz. 399, 402, 577 P.2d 250 (1978), quoting *United States* v. *Associated Milk Producers, Inc.*, supra, 116; *State Employees' Credit Union, Inc.* v. *Gentry*, 75 N.C. App. 260, 264, 330 S.E.2d 645 (1985) (motions to intervene made after judgment has been rendered are disfavored and are granted only after finding of extraordinary and unusual circumstances or upon strong showing of entitlement and justification); *Marteg Corp.* v. *Zoning Board of Review*, 425 A.2d 1240, 1243 (R.I. 1981) (because of potential of prejudice to parties, person seeking to intervene after judgment has especially heavy burden)." (Emphasis in original.) *Rosado* v. *Bridgeport Roman Catholic Diocesan Corp.*, supra, 276 Conn. 238 n.8 (*Sullivan, J.*, dissenting).

[15] The majority in *Rosado* concluded that the trial court had jurisdiction to allow the intervention for purposes of modifying the sealing orders because the orders were injunctive in nature and the trial court always has the power to modify an injunction. *Rosado* v. *Bridgeport Roman Catholic Diocesan Corp.*, supra, 276 Conn. 213–16. I agree that, when the trial court has granted injunctive relief, the court retains jurisdiction to modify that relief *at the request of a party*. See *AvalonBay Communities, Inc.* v. *Plan & Zoning Commission*, 260 Conn. 232, 242 n.11, 796 A.2d 1164 (2002). As I explained in my dissenting opinion in *Rosado*, however, that does not mean that the trial court has limitless discretion to grant a postjudgment *motion to intervene* in a case in which the court granted injunctive relief. See *Rosado* v. *Bridgeport Roman Catholic Diocesan Corp.*, supra, 240 n.11 (*Sullivan, J.*, dissenting). A fortiori, it does not mean that the court has limitless discretion to grant a postjudgment motion to intervene in a case for purposes of modifying an injunction when doing so would undermine the settled expectations of the parties. Id.

The majority in *Rosado* also concluded that the trial court had not abused its discretion in allowing the intervenors to intervene in the underlying cases even though they had been withdrawn for more than one year because "the trial court's exercise of jurisdiction over the withdrawn cases was limited in scope . . . [and] the court restored the withdrawn cases to the docket solely for the purpose of considering the [intervenors'] claim regarding sealed documents in the court's files. . . . Thus, the court's exercise of jurisdiction over the withdrawn cases did not implicate the substantive rights of the parties to those cases." (Citation omitted.) Id., 223. Thus, the majority simply assumed that the defendants had no substantive interest in the finality of the settlement and withdrawal of the underlying cases or in avoiding being haled back into court to litigate an issue that had not been raised by any of the parties to the underlying cases and that could have been raised by the intervenors at any time during the eight years that the cases were active. That assumption was, and continues to be, inconsistent with judicial policy in favor of judicial economy, the stability of former judgments and finality and with the strong public policy favoring the pretrial resolution of disputes.

[16] Whether the trial court should modify sealing orders later than one year after a case has been terminated, when the files are subject to destruction by the court pursuant to Practice Book § 7-10, is a separate question. I continue to believe that "[t]he mere accident that the documents are in the [trial] court's custody in the present case is not a reason for treating the case differently from a case in which the parties and the court diligently fulfilled their obligations with respect to the documents." *Rosado* v. *Bridgeport Roman Catholic Diocesan Corp.*, supra, 276 Conn. 237 n.6 (*Sullivan, J.*, dissenting). I cannot perceive how the intervenors can have a right of access that is dependent on a mere accident of timing. At the very least, the fact that the sealed documents could have been destroyed before the intervenors ever became involved in the litigation should be considered as part of the balancing test. Moreover, the majority's statement that "[p]arties electing to leave documents in the custody of the court after the time when they are authorized to remove them do so at their peril" is inapposite. Although the defendants may have had the right to remove materials that

were not judicial documents from the custody of the court, the majority has pointed to no authority for the proposition that they had the right to remove judicial documents that were attached to motions and were part of the official court file.

[17] I do not address the question of whether this standard should apply when the parties reasonably have relied on the permanence of the sealing orders and an intervenor seeks modification of the order *prior* to judgment, as in *Securities & Exchange Commission*. Accordingly, the majority's statement that I elevate "reliance to an exalted status that almost always will be outcome determinative in favor of the party seeking to block public access to court documents" is entirely unfounded. (Internal quotation marks omitted.) *Rosado* v. *Bridgeport Roman Catholic Diocesan Corp.*, supra, 276 Conn. 210. I conclude only that, when the parties have relied on the permanence of the sealing orders *in disposing of the case*, then "the principle . . . that the integrity of judgments should be protected . . . acts to *limit* the court's power to grant postjudgment intervention for the purpose of modifying a protective order." (Emphasis in original.) Id., 239 n.9 (*Sullivan*, *J.*, dissenting).

[18] The sealing orders provided that the covered materials were not to be disclosed or disseminated to nonparties "[u]ntil further order of the court, which order shall be made not later than the completion of jury selection . . . ." *Rosado* v. *Bridgeport Roman Catholic Diocesan Corp.*, supra, 276 Conn. 174. Thus, the parties reasonably could have believed that the sealing orders would not be modified unless disclosure of a document was required in order to try the case. Indeed, if the defendants in the present case could not reasonably rely on the continued existence of the sealing orders, it is difficult to imagine any circumstances that would give rise to a justifiable reliance. As the defendants point out, under the majority's view, *no* protective orders will be permanent because they all will be subject to modification upon a showing of "appropriate grounds," even after the underlying case has been settled and terminated. Thus, parties will never be able to establish justifiable reliance.

[19] I recognize that the court in *Securities & Exchange Commission* v. *TheStreet.com*, supra, 273 F.3d 231, stated that "protective orders that are on their face temporary or limited may not justify reliance by the parties." See also *In re Agent Orange Product Liability Litigation*, 821 F.2d 139, 147 (2d Cir.) (when parties settled case before trial, parties could not have relied on permanence of protective order that applied solely to pretrial stages of litigation), cert. denied sub nom. *Dow Chemical Co.* v. *Ryan*, 484 U.S. 953, 108 S. Ct. 344, 98 L. Ed. 2d 370 (1987). In light of "[t]he strong public policy favoring the pretrial resolution of disputes"; (internal quotation marks omitted) *Blakeslee Arpaia Chapman, Inc.* v. *EI Constructors, Inc.*, supra, 239 Conn. 742; I disagree with this reasoning.